

(Rev. 6/90)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

V.

CRIMINAL NO. 03-10346Frederick Simone
DefendantMEMORANDUM OF SENTENCING HEARING
AND
REPORT OF STATEMENT OF REASONSWoy D.J.

Counsel and the defendant were present for sentencing hearing on 6/16/05. The matters set forth were reviewed and considered. The reasons for sentence pursuant to Title 18 U.S.C. 3553(c), as set forth herein, were stated in open court.

1. Was the presentence investigation report (PSI) reviewed by counsel and defendant including any additional materials received concerning sentencing? ☒ Yes ☐ No
- 2.(a) Was information withheld pursuant to FRCrP 32(c)(3)(A)? ☐ Yes ☐ No
- (b) If yes to (a), has summary been provided by the court pursuant to FRCrP 32(c)(3)(B)? ☐ Yes ☐ No
- 3.(a) Were all factual statements contained in the PSI adopted without objection? ☐ Yes ☒ No
- (b) If no to (a) the PSI was adopted in part with the exception of the following factual issues in dispute:

As the government and defendant agreed, the defendant was not an organizer or supervisor

- (c) Disputed issues have been resolved as follows after ☐ evidentiary hearing(s), ☐ further submissions and/or ☐ arguments:

[kmemsen.]

4.(a) Are any legal issues in dispute? ___Yes ___No

If yes, describe disputed issues and their resolution:

5.(a) Is there any dispute as to guideline applications (such as offense level, criminal history category, fine or restitution) as stated in the PSI? ___Yes ___No

If yes, describe disputed areas and their resolution:

(b) Tentative findings as to applicable guidelines are:

Total Offense Level: 20

Criminal History Category: IV

51 to 63 months imprisonment

24 to 36 months supervised release

\$ 7,500 to \$ 75,000 fine (plus \$ _____ cost of imprisonment/supervision)

\$ _____ restitution

\$ 200 special assessment (\$ _____ on each of _____ counts)

6.(a) Are there any legal objections to tentative findings? ___Yes ___No

(b) If no, findings are adopted by the Court.

(c) If yes, describe objections and how they were addressed:

OR sentence hearing is continued to _____
to allow for preparation of oral argument or filing of written
submissions by _____.

- 7.(a) Remarks by counsel for defendant.¹ ☒ Yes ___ No
- (b) Defendant speaks on own behalf. ☒ Yes ___ No
- (c) Remarks by counsel for government. ☒ Yes ___ No

8.(a) The sentence will be imposed in accordance with the prescribed forms in the Bench Book Sec. 5.02 as follows:

63 months imprisonment *rec serve in state facility*
 months/intermittent community confinement *be concurrent*
 months probation
36 months supervised release *2*
 \$ 0 fine (including cost of imprisonment/supervision)
 \$ restitution
 \$ 200 special assessment (\$ on each of counts)

Other provisions of sentence: (community service, forfeiture, etc.)

** No firearm or other dangerous weapon*
DNA kit

☒ (b) After imposing sentence, the Court has advised the defendant of the defendant's right to appeal within 10 days of the entry of judgment in accordance with FRCrP 32(a)(2).

¹ The order of argument and/or recommendations and allocution may be altered to accord with the Court's practice.

9. Statement of reasons for imposing sentence.
Check appropriate space.

(a) ☒ Sentence is within the guideline range and that range does not exceed 24 months and the Court finds no reason to depart from the sentence called for by application of the guidelines.

OR ☐ Sentence is within the guideline range and that range exceeds 24 months and the reasons for imposing the selected sentence are:

(b) ☐ Sentence departs from the guideline range as a result of
☐ substantial cooperation upon motion of the government

OR

☐ a finding that the following (aggravating or mitigating) circumstance exists that is of a kind or degree not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that this circumstance should result in a sentence different from that described by the guidelines for the following reasons:

(c) ☐ Is restitution applicable in this case?

☐ Yes ☒ No

☒ Is full restitution imposed?

☐ Yes ☐ No

If no, less than full restitution is imposed for the following reasons:

(d) ☐ Is a fine applicable in this case? ☒ Yes ☐ No

Is the fine within the guidelines imposed? ☐ Yes ☒ No

If no, the fine is not within guidelines or no fine is imposed for the following reasons:

☒ Defendant is not able, and even with the use of a reasonable installment schedule is not likely to become able, to pay all or part of the required fine; or

☐ Imposition of a fine would unduly burden the defendant's dependants; or

☐ Other reasons as follows:

10. Was a plea agreement submitted in this case? ☒ Yes ☐ No

Check appropriate space:

☒ The Court has accepted a Rule 11(e)(1)(A) charge agreement because it is satisfied that the agreement adequately reflects seriousness of the actual offense behavior and accepting the plea agreement will not undermine the statutory purposes of sentencing.

☐ The Court has accepted either a Rule 11(e)(1)(B) sentence recommendation or a Rule 11(e)(1)(C) sentence agreement that is within the applicable guideline range.

☐ The Court has accepted either a Rule 11(e)(1)(B) sentence recommendation or a Rule 11(e)(1)(C) sentence agreement that departs from the applicable guideline range because the Court is satisfied that such a departure is authorized by 18 U.S.C. 3553(b).

11. Suggestions for guideline revisions resulting from this case are submitted by an attachment to this report. ☐ Yes ☐ No

12. The PSI is adopted as part of the record, either in whole or in part as discussed above and is to be maintained by the U.S. Probation Department under seal unless required for appeal.

13. Judgment will be prepared by the clerk in accordance with above.

14. The clerk will provide this Memorandum of Sentencing Hearing And Report of Statement of Reasons to the U.S. Probation Department for forwarding to the Sentencing Commission, and if the above sentence includes a term of imprisonment, to the Bureau of Prisons.

June 16, 2005.
DATE

Angela R. Way
UNITED STATES DISTRICT JUDGE